

**DRUG LABORATORY REMEDIATION PROGRAM**  
**PROBLEMS WITH SOLUTIONS ADDRESSED**  
(as of 09/24/2009)

**Problem #1:** Clandestine drug laboratories are discovered and affect public safety in other structures (i.e. storage units, commercial property) besides real property (residential structures). A.R.S. § 12-1000(A)

Proposed Solution:

- Drafted proposed wording changes to A.R.S. § 12-990(7)(a) and (8)(c) to include commercial properties.

Additional Concerns/Proposed Solution – not yet addressed in drafted proposed changes:

- Include marijuana “grow houses”.
- Include all other dangerous drugs manufactured in clandestine drug laboratories.
- Currently A.R.S. § 12-990(1)(2) and A.R.S. § 12-1000(A) only applies to methamphetamine, ecstasy and LSD.

**Problem #2:** The Board of Technical Registration relies solely on notification provided by law enforcement agencies of all seizures that are conducted. If the Board of Technical Registration does not receive notice of each seizure conducted, then the properties can not be tracked and be ensured they are properly cleaned. A.R.S. § 12-1000(A)(2)

Proposed Solution:

- Lisa Vardian with Board of Technical Registration will meet quarterly with Mike McCaffery with DEA and/or Rich Rosky to compare seizure site lists to ensure numbers are accurate.
- This is a procedural change.

Additional Concerns/Proposed Solution – not yet addressed in drafted proposed changes:

- Clarify time frame for law enforcement to send notification of seizure to the required entities.

**Problem #3:** After a seizure occurs, most of the properties stay occupied or become re-occupied before the required remediation is conducted. A.R.S. § 12-1000(A)(3)(4)

Proposed Solution:

- Drafted proposed wording to new subsection (C) which clearly states that the property can not be entered or occupied until remediation is complete and any violation of this section is a class 5 felony.
- Drafted proposed wording to new subsection (C) which clearly states it is a class 4 felony if the owner knowingly admits or allows a child or vulnerable adult to enter or occupy the property.

**Problem #4:** The statute was modified on August 12, 2005 stating if the property owner fails to remediate the property within twelve months after the date of seizure, the county or city may remediate the property using a registered remediation firm with the cost of remediation passed on to the property owner in the form of a lien on the property. To our knowledge, no county or city has done this. A.R.S. § 12-1000(C)

Actions Taken/Outcomes:

- The Board of Technical Registration currently monitors sites and notifies cities and counties if a site has not been remediated after twelve months.

Additional Concerns/Proposed Solution – not yet addressed in drafted proposed changes:

- Have violators of drug related offences pay a “surcharge” into a fund which is managed by Arizona Criminal Justice Commission. The Board of Technical Registration could use a portion of those funds to have remediations conducted.
- State/County/City forfeiture laws to assist for the cost of remediation.
- Possible Arizona Department of Environmental Quality – Supplemental Environmental Projects (SEP’s) to be used for funding of the remediations.

**Problem #5:** There are numerous unremediated occupied properties that were seized prior to the statute modification on August 12, 2005. How can these properties be forced to be unoccupied and/or remediated?

Actions Taken/Outcomes:

- The Board of Technical Registration has sent letters to owners of each unremediated property advising them of the possible residual contamination and the requirements for remediation.

Additional Concerns/Proposed Solution – not yet addressed in drafted proposed changes:

- Have violators of drug related offences pay a “surcharge” into a fund which is managed by Arizona Criminal Justice Commission. The Board of Technical Registration could use a portion of those funds to have remediations conducted.
- State/County/City forfeiture laws to assist for the cost of remediation.
- Possible Arizona Department of Environmental Quality – Supplemental Environmental Projects (SEP’s) to be used for funding of the remediations.

**Problem #6:** The posted Notice of Removal’s are being removed prior to the required remediation. The law currently states that the only way a posted notice can be removed is by the registered drug laboratory site remediation firm after the remediation is complete. A.R.S. § 12-1000(D)

Proposed Solution:

- Proposed wording changes to A.R.S. § 12-1000(A)(4) and new subsection (L) to include the owner shall be responsible for maintaining the posted Notice of Removal.
- Proposed wording change to (G) if the posted Notice of Removal is missing, the Board of Technical Registration criminal investigators may repost the site.

**Problem #7:** The Notice of Removal states that it is unlawful for any person other than the owner, landlord or manager to enter the residually contaminated portion of the real property until the owner has the property remediated. However, after the remediation is completed any person may use, enter, occupy, rent or sell the real property. Unremediated properties are being occupied due to the misinterpretation between enter and occupy. A.R.S. § 12-1000(A)(4)(D)(2)

Proposed Solution:

- Drafted proposed wording to new subsection (C) which clearly states that the property can not be entered or occupied until remediation is complete.

**Problem #8:** A sale can be conducted on a property where a seizure occurred without real estate agent's or potential buyer's knowledge of the seizure since the law currently places the sole responsibility on the property owner to disclose. If the property owner fails to provide the required disclosure, the buyer would then have to proceed with a civil action. A.R.S. § 12-1000(F)(1)

Proposed Solution:

- The Board of Technical Registration has already been involved in communicating and educating the real estate community, via articles in the Arizona Association of Realtors magazine and presentations at several of their meetings, on these areas and will continue to do so.
- The Board of Technical Registration is currently working with the Arizona Association of Realtors to have the Seller's Property Disclosure Statement revised to include specific language.
- Drafted proposed wording to new subsection (H)(1) to require the property owner to notify a buyer in writing prior to signing a contract.

Additional Concerns/Proposed Solution – not yet addressed in drafted proposed changes:

- The County Recorder and /or Assessor's office to receive notice of seizure from law enforcement. They would also receive notice of remediation once it is conducted.

**Problem #9:** Unremediated sites are being rented and occupied by tenants and customers (apartment units and hotel/motel rooms). The statute is misleading in that a tenant or customer may void a rental agreement if the landlord, owner or manager fails to provide written notice. A.R.S. § 12-1000(F)(2)(3)(4)

Proposed Solution:

- Proposed to delete subsections (F)(2)(3).

**Problem #10:** Mobile homes and recreational vehicles where seizures have occurred are being removed from the site. There is no way to know if these mobile structures are re-inhabited, sold, rented or demolished since there is currently no tracking measure of them A.R.S. § 12-1000(F)(5)

Proposed Solution:

- Drafted proposed wording change to (A)(2) to include notice of seizure to be sent to the State Department of Transportation Motor Vehicle Division.

Additional Concerns/Proposed Solution – not yet addressed in drafted proposed changes:

- If the structure was affixed to land, have the Office of Manufactured Housing receive notice of the seizure.
- Have law enforcement provide more detailed information (i.e. VIN for recreational vehicles, date of manufacture and certification number for mobile homes) regarding the structure/recreational vehicle involved.

**Problem #11:** If an owner fails to provide any required notice, the owner is subject to a one thousand dollar civil penalty and is liable for any harm resulting from their failure to comply with the requirements. The law does not specify who enforces this. A.R.S. § 12-1000(G)

Additional Concerns/Proposed Solution – not yet addressed in drafted proposed changes:

- Move the penalty to Title 32 - Board of Technical Registration's statutes (BTR can assess a \$2,000 per violation penalty).

**Problem #12:** A person who operates a clandestine drug laboratory and is not the owner, shall pay restitution to the owner of the real property for all costs that the owner incurred to remediate the property. The law does not specify who enforces this. A.R.S. § 12-1000(I)

Actions Taken/Outcomes:

- Letter the Board of Technical Registration sends to property owners includes this information.

**Problem #13:** A person who knowingly violates an order or Notice of Removal that is issued by a peace officer is guilty of a class 6 felony. A person who knowingly disturbs a Notice of Removal posted on the real property is guilty of a class 2 misdemeanor. This is not being enforced A.R.S. § 12-1000(J)

Proposed Solution:

- Drafted proposed wording to new subsection (L) to include the Board of Technical Registration may hold the property owner administratively responsible for the 1<sup>st</sup> occurrence of failure to maintain the posted Notice of Removal. The second and subsequent occurrences shall be treated as criminal violations.

Additional Proposed Changes already addressed:

- Drafted proposed wording to new subsection (F) that the Board of Technical Registration shall maintain and make available public documents.

Additional Concerns/Proposed Solution – not yet addressed in drafted proposed changes:

- Property owner hiring a 3<sup>rd</sup> party to attempt an illegal clean-up.
- Making failure to disclose at the time of sale, lease or rental a class 5 felony under Title 32 or using Title 13 fraud statutes as the basis for prosecution.
- Joint legislative package – A.R.S. §§ 12-990 and 12-1000 along with appropriate changes to be made to Title 32 (Board of Technical Registration's statutes).